IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7212 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

KANAKSINH LALUBHA JADEJA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 7212 of 2002

MR NK MAJMUDAR for Petitioner No. 1

MR IM PANDYA AGP for Respondent No. 1-2,4

MS PJ DAVAWALA for Respondent No. 3

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 30/10/2002

ORAL JUDGEMENT

By way of this Special Civil Application, the petitioner has challenged the order of detention dated

24/6/2002 passed by the District Magistrate, Bhavnagar in exercise of powers under Section 3(2) of the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

2. I have heard learned advocate for the petitioner and also perused the material on record. According to learned advocate for the petitioner, against the impugned order of detention, the petitioner made a detailed representation on 14/7/2002 to the Secretary, Advisory Board which has been received by the authority on 15/7/2002 and the said representation of the petitioner has been rejected on 31/7/2002 and the petitioner was informed accordingly by letter dtd.3/8/2002 and the petitioner received the said communication thereafter. Hence according to the learned advocate for the petitioner there is delay in deciding the representation of the petitioner and there is also delay in communicating the decision of the representation of the petitioner, which has not been explained satisfactorily by any the authority, which is unconstitutional. In support of his say, the learned advocate for the petitioner has placed reliance upon the decision of the Hon'ble Supreme Court reported in AIR 1981 SC 1126, in which the Honourable Supreme Court has held as under:-

> "We would emphasise that it is the duty of the State to proceed to determine representations of the character above mentioned with the utmost expedition, which means that the matter must be taken up for consideration as soon as such a representation is received and dealt with continuously (unless it is absolutely necessary to wait for some assistance in connection with it) until a final decision is taken and communicated to the detenu. This not having been done in the present case we have no option but to declare the detention unconstitutional. We order accordingly, allow the appeal and direct that the appellant be set at liberty forthwith."

3. Since the detaining authority has not decided the representation of the petitioner and has not communicated the decision on the representation to the petitioner promptly, in view of the above judgment relied upon by the learned advocate for the petitioner, the order of detention is illegal and the same cannot be sustained. Learned advocate for the petitioner does not press any other points.

4. In view of the above, the petition is allowed.

The order of detention dated 24/6/2002 passed against the detenu is hereby quashed and set aside. The detenu namely Kanaksinh Lalubha Jadeja is ordered to be set at liberty forthwith, if not required in any other case. Rule is made absolute accordingly with no order as to costs. D.S. Permitted.

(R.P.DHOLAKIA,J.)

Rafik